

# SENATE RECORD VOTE ANALYSIS

104th Congress  
2nd Session

Vote No. 280

September 10, 1996, 2:42 pm  
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## DEFENSE OF MARRIAGE ACT/Passage

**SUBJECT:** Defense of Marriage Act . . . H.R. 3396. Passage.

**ACTION: BILL PASSED, 85-14**

**SYNOPSIS:** As introduced, H.R. 3396, the Defense of Marriage Act, will define for purposes of Federal law the words "marriage" and "spouse," and will specify that each State will be allowed to decide for itself whether it will "give effect to any public act, record, or judicial proceeding" of another State "respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State." The definition of "marriage" for Federal law will be "a legal union between one man and one woman as husband and wife." The definition of "spouse" for Federal law will be "a person of the opposite sex who is a husband or a wife."

**Those favoring** passage contended:

Argument 1:

The traditional family has stood for 5,000 years, and whatever the eventual fate of this Nation, will continue to stand as the fundamental cornerstone of all successful civilizations. Fathers and mothers, not governments, have children, raise them, love them, and teach them to hold and to follow the moral virtues without which no civilized polity can exist. The traditional family does not need the government to survive; the government needs the traditional family to survive. We are not saying that the family structure cannot break down within a society. It can, and has done so before in decaying civilizations. Each time, because it is the natural human condition, the family has reemerged once the civilization has died from its own degeneracy.

Our civilization is decaying at a frightening pace. Just a few decades ago the nuclear family was intact. Children lived with their mothers and fathers, who were married, and, outside of Hollywood, divorce was uncommon. Times have changed. In just a few years, if present trends continue, more than half of all children in our brave new world will be born to single mothers. Fathers are being

(See other side)

YEAS (85)				NAYS (14)		NOT VOTING (1)	
Republican (53 or 100%)		Democrats (32 or 70%)		Republicans (0 or 0%)	Democrats (14 or 30%)	Republicans (0)	Democrats (1)
Abraham	Helms	Baucus	Harkin		Akaka		Pryor- <sup>2</sup>
Ashcroft	Hutchison	Biden	Heflin		Boxer		
Bennett	Inhofe	Bingaman	Hollings		Feingold		
Bond	Jeffords	Bradley	Johnston		Feinstein		
Brown	Kassebaum	Breaux	Kohl		Inouye		
Burns	Kempthorne	Bryan	Lautenberg		Kennedy		
Campbell	Kyl	Bumpers	Leahy		Kerrey		
Chafee	Lott	Byrd	Levin		Kerry		
Coats	Lugar	Conrad	Lieberman		Moseley-Braun		
Cochran	Mack	Daschle	Mikulski		Moynihan		
Cohen	McCain	Dodd	Murray		Pell		
Coverdell	McConnell	Dorgan	Nunn		Robb		
Craig	Murkowski	Exon	Reid		Simon		
D'Amato	Nickles	Ford	Rockefeller		Wyden		
DeWine	Pressler	Glenn	Sarbanes				
Domenici	Roth	Graham	Wellstone				
Faircloth	Santorum						
Frahm	Shelby						
Frist	Simpson						
Gorton	Smith						
Gramm	Snowe						
Grams	Specter						
Grassley	Stevens						
Gregg	Thomas						
Hatch	Thompson						
Hatfield	Thurmond						
	Warner						

### EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

### SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

replaced with government support checks. Every year, the tax burden on the surviving families is raised, and the tax code is structured to take more from them than from single people. Also, every year, the value of the dependent child tax credit declines. The country needs 2-parent families to raise the next generation of Americans, but it is pursuing policies that is destroying them.

As our families have fallen apart, the traditional values that have held this country together have radically weakened. Prudence, temperance, fortitude, justice, faith, hope, and love are a litany that has gone out of style, and sin has been replaced by situational ethics and political correctness. Acquisitiveness and instant gratification are the "virtues" of the age, and the self-validated "saints" are those who would redistribute the baubles and bless any license.

A few benefits still attach to marriage in this incontinent age, but they are under assault. Homosexuals are now demanding recognition of same-sex marriages in order to gain those benefits. The primary benefit of marriage is that it is a revered institution. Though the center may not long hold, Americans still have a vague reverence for the family values which many of them increasingly do not practice. By gaining recognition for their "marriages," homosexuals hope that their behavior will not merely be tolerated, but endorsed. The secondary benefit that they would receive is that they would become eligible for spousal insurance and retirement benefits. Though we do not see the monetary damage as great as the moral damage that would come from redefining marriage, it is worth mentioning that granting spousal benefits would probably cost the Federal Government alone billions of dollars per year.

Through every moment of recorded history, and in every religion, the traditional family has been recognized as the foundation of prosperity and happiness, and, in democratic societies, as the foundation of freedom. Human beings have always given traditional marriage a special sanction, and marriage has always been understood as a union between a man and a woman. For most religions, including the Judeo-Christian religions on which this Nation was built and still rests, marriage has been considered a sacred institution. In the Judeo-Christian ethic homosexuality is considered a grave sin. God created Adam and Eve, not Adam and Steve. In most of America, in surviving families, traditional values are still embraced. Whether the propensity to commit homosexual acts comes from nature or nurture, or both, is as irrelevant in the Judeo-Christian tradition as whether the propensity for committing other particular sins is genetic or learned. People are expected to try to refrain from those sinful acts to which they are inclined by their own personal natures. Government recognition of homosexual marriages would not condemn the sin; it would deny the sin and venerate its practice. Tens of millions of Americans who hold marriage as a sacred gift from God do not want their Government to redefine marriage as including homosexual unions. Redefining the family, the cornerstone of our society, at the same time that it is rapidly fraying from other pressures, would be a radically foolish step, and would be deeply offensive to the millions of traditional families that still survive.

Some Senators have questioned the timeliness of this legislation, saying that no Federal or State court has yet issued an edict to redefine marriage to include same-sex couples. This argument is appalling. Since when is Congress' legislative power restricted to vetoing the legislative decisions of liberal activist courts? There is no doubt that homosexuals have been attempting to find judges who will declare their marriages valid. In Hawaii, it appears that they may be on the verge of success. If this decision affected only Hawaii, we would be willing to leave it to the citizens of Hawaii to overturn the decision of their activist court, if they so desired. Basically, though we strongly disapprove of recognition of same-sex marriages, we think each State has the right to make the decision for itself. We strongly believe in States' rights. However, a decision in Hawaii will affect all the other States and the Federal Government itself. Every State will have to grant full legal recognition to those marriages under the full faith and credit clause of the Constitution, and the Federal Government will have to grant recognition as well. Even without those rulings court cases have been brought. For instance, one suit in Minnesota by a homosexual veteran who sought spousal benefits was denied only because the Minnesota Supreme Court had already defined marriage as a union between persons of the opposite sex. In that case, if the Minnesota Court had not already issued a definition, the Federal Government would likely have had to pay benefits because it did not have (and does not have) its own definitions for "spouse" and "marriage." Those words appear throughout the legal code, but no one ever thought to attach a definition because no one ever thought that our country would degenerate to such a point that the question would ever arise as to whether a marriage was a union between one man and one woman.

The courts have long recognized that on issues such as marriage, States have a public policy exception to the full faith and credit clause. For instance, if the citizens of one State strongly opposed allowing people to marry under the age of 18, that State would not have to recognize as married people who were married in other States when they were minors. Generally, there has not been a great deal of litigation on such issues. With the activist courts we have today, though, and with the activist homosexual groups that now exist, a decision by a State to legitimize homosexual marriages would be used as grounds for countless suits in any State that did not have an expressly enacted policy against homosexual unions.

The solution offered by this bill is simple. First, for Federal law, it will define "marriage" and "spouse" to apply only to unions between one man and one woman. A State will still be free to recognize homosexual marriages, but for purposes of Federal law, such as for Federal retirement benefits, those unions will not be recognized. No one questions the right of the Federal Government to take this step. Second, the bill will provide that no State will have to recognize as married homosexuals who were married under the laws of another State that recognized homosexual marriages. This part of the bill has led to a couple of specious arguments. First, some Senators who have never before in our memory expressed any concern for States' rights have said that passing this section will infringe on States' rights by limiting the effect of their laws. The obvious answer is that the real infringement on States' rights would come from allowing one State to overturn the laws of all the other States. The other argument that has been made is that it is only

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constitutional for Congress to expand the full faith and credit clause, not restrict it. The Constitution specifically states the following: "Full faith and credit shall be given in each State to the Public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof." Though a plain reading of the amendment would seem to encompass both expansion and contraction (or even of only contraction because it is not possible to give more than full faith and credit), our colleagues and some legal scholars have played sophist games with the word "prescribe," saying that it clearly does not encompass a prohibition. Our colleagues are entitled to their opinion; suffice it to say that most legal scholars firmly disagree. Even the liberal legal experts of the Clinton Administration are convinced of the constitutionality of this provision.

If Hawaii or any other State decides to approve homosexual marriages that is its business. However, we will not allow one State to force this decision on other States or on the Federal Government. We therefore strongly support the Defense of Marriage Act.

#### Argument 2:

We are not voting for this bill because we in any way favor discrimination against gays or lesbians, nor are we voting for it as a means of expressing either approval or disapproval of same-sex marriages. We support this bill solely because we favor letting the States decide the validity of same-sex marriages instead of a single unelected judge. Senators who say that the decision in Hawaii will not affect other States are not being honest. Though the law is not totally clear, we believe that if Hawaii recognizes same-sex marriages, all States will be forced to recognize the validity of those marriages unless they affirmatively adopt laws banning them. We therefore support this bill.

#### Those opposing passage contended:

##### Argument 1:

The Defense of Marriage Act does not defend marriage against some imminent, crippling threat. Maintaining the freedom of States to define a civil union or a legal right to benefits cannot, and will not, harm the strength and power of marriage. Neither can it diminish the love between a husband and a wife, nor the devotion they feel toward their children. Whether the Government should give official sanction to same-sex relationships does raise some extremely difficult issues--issues of morality, of childbearing, of marriage, and of the intimacies of life. As a constitutional matter, it is about placing the Federal Government in the midst of an issue firmly and historically within the jurisdiction of the States. As a political matter, it is about denying a class of people benefits that no single State has yet conferred.

As important as all these issues may be, the core of this debate revolves around how we feel about intimate conduct we neither understand nor feel comfortable discussing. Scientists have not yet discovered what causes homosexuals to be attracted to members of their own sex. For the vast majority of us who do not hear that particular drummer it is difficult to comprehend such an attraction. Nevertheless, homosexuality has existed throughout history. A small but significant number of our fellow human beings have always had a different sexual orientation, and the clear weight of serious scholarship has concluded that they have not had this orientation by choice. Given the prejudice too often directed toward gay people and the pressure they feel to hide the truth--their very identities--from family, friends, and employers, it is hard to imagine why anyone would actually choose to bear such a heavy burden unnecessarily.

The trend in the United States is toward acceptance of homosexuals. Older generations are still very uncomfortable and hostile to gays and lesbians, but each succeeding generation is more accepting. We are pleased by this trend. A basic respect for human dignity, which gives us the strength to reject racial, gender, and religious intolerance, dictates that in America we should also eliminate discrimination against homosexuals. We believe that ending this discrimination is the last frontier in the ultimate fight for civil and human rights.

As recently as 1967 16 States outlawed interracial marriages because the citizenry of those States believed they were immoral. Today, nearly everyone will concede that the moral discomfort, and even revulsion, that people felt toward interracial marriages did not give them the right to discriminate against such marriages. Immorality flows from immoral choices, but skin color is not a choice. If homosexuality is proven to be an inalienable characteristic, as is becoming more evident every day, then moral objections to gay marriages do not significantly differ from moral objections to interracial marriages. We would never vote to make any religion go against its tenets by recognizing gay marriages, but marriage is also a civil institution, and a civil society should give them recognition.

The timing of this bill is very suspect. The final decision in the Hawaii case will probably not be made for another 2 years, and it may well be a decision not to recognize same-sex unions. Right before an election, passage of this bill will no doubt stir up anti-homosexual bigotry, which may help some candidates for office, but there does not seem to be any other valid reason for considering this bill now. Another objection we have is that the bill is clearly unconstitutional. The full faith and credit clause only gives Congress the power to prescribe its effect--it does not give it power to nullify it. We have consulted with many constitutional experts who have

confirmed that this bill is unconstitutional. They have said that Congress has used its power to prescribe laws to expand the full faith and credit clause, but it has never before unconstitutionally attempted to restrict it. A third major problem with this bill is that it is totally unnecessary because no matter what Hawaii decides its decision will not bind the other States. The courts have long recognized a public policy exception to the full faith and credit clause on the issue of marriage. Each State has been allowed to set up its own particular rules. Our final objection is that this bill violates States' rights. The Federal Government has never before interfered in the regulation of marriage, and it should not start now. Marriage is an issue for the States.

We believe that discrimination against homosexuals, including in marriage, should be brought to an end. However, that is not about to happen, with or without this bill. Eventually, though, we have no doubt that it will end. In our view, this bill is discriminatory. We therefore urge its rejection.

Argument 2:

We do not favor same-sex marriages but we oppose this bill because we think it is being offered to stir up feelings against gays and lesbians in an election year.